Remarks

Applicant respectfully requests reconsideration of this application as amended. Claims 1-10 and 22 have been amended. No claims have been cancelled or added. Therefore, claims 1-25 are presented for examination.

35 U.S.C. §101 Rejection

Claims 1-3 and 9-10 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. Claims 1-3 and 9-10 have been amended to appear in better condition for allowance. More specifically, claims 1-3 and 9-10 now recite a "computer-implemented method." Accordingly, applicant respectfully requests the §101 rejection be withdrawn.

35 U.S.C. §102(e) Rejection

Claims 21-25 stand rejected under 35 U.S.C. §102(e) as being anticipated by Lin et al. (U.S. Publication No. 2003/0101290). Applicant submits that the present claims are patentable over Lin.

Lin discloses a system and method for providing device driver support in an open source operating system. The device driver includes an open source operating system, including an open source kernel, is constructed from an open source service layer and a set of precompiled driver modules. The system of Lin allows for an open source operating system that permits computer system manufacturers to provide device drivers for its computer systems, while preventing the disclosure of sensitive proprietary information in those device drivers. (See Lin at pg. 2, paragraphs [0009] – [0011]).

Claim 21, as amended, recites:

> A computer program product including a medium readable by a computer, the medium carrying instructions which, when executed by the computer, cause the computer to:
> define symbols to be imported from a Linux kernel, the symbols being uniquely associated with a particular version of the Linux kernel and used by the computer program product which operatively defines a device driver;
> declare structures that describe application program interfaces (APIs) to be imported from the Linux kernel for operation of the device driver;
> obtain the symbols that define identification data from the Linux kernel;
> combine the symbols with driver code functionality provided by the computer program product to form a kernel version independent device driver without version identification data; and
> dynamically import the kernel version independent device driver in the Linux kernel.

Applicant submits that Lin does not disclose or suggest combining the symbols with driver code functionality provided by the computer program product to form a kernel version independent device driver without version identification data, as disclosed by claim 21. The Final Office Action cites "the complied service layer is linked to the complied driver modules" in Lin as disclosing this feature. (Final Office Action at page 7, point 10). However, this section in Lin fails to disclose or reasonably suggest the formation of a kernel independent device driver without version identification data. Instead, this section of Lin discloses that the complied service layer is linked to the complied driver modules, which is not the same as forming a kernel version independent device driver without version identification data. Therefore, claim 21 is patentable over Lin.

Claims 22-25 depend from claim 21 and include additional limitations. Therefore, claims 22-25 are also patentable over Lin.

35 U.S.C. §103(a) Rejection

Claims 1-20 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lin et al. (U.S. Publication No. 2003/0101290). Applicant submits that the present claims are patentable over Lin.

Claim 1, recites:

> A computer implemented method comprising:
> distributing a computer program component, which includes code defining functionality associated with the computer program module and excludes version identification data, for the computer program module to execute the functionality under command from a master computer program; and
> distributing an installation module which, when run on a computer, obtains the version identification data from the master computer program and combines the version identification data and the computer program component to define the computer program module.

Applicant submits that Lin does not disclose or suggest a computer program component excluding version identification data, as disclosed in claim 1. The Examiner states in the Final Office Action, that ". . . the dynamic device driver of Lin's invention . . . provides a method of building drivers which exclude version identification" and refers to Lin at pg. 2, paragraph [0017], lines 11-13 to support such a conclusion. However, Lin at pg. 2, paragraph [0017], lines 11-13 discloses that "the compiled driver modules do not have to recognize changes to the kernel of the operating system." Even though the ***compiled driver*** does not have to recognize changes to the kernel of the

operating system, the ***service layer*** (which the complied driver is based in part on) still has to recognize changes to the kernel of the operating system. For example, Lin states that "[i]f the kernel of the operating system is modified, the service layer is recompiled against the modified kernel." (Lin at paragraph [0010], lines 11-13). Furthermore, figure 1 in Lin shows that complied driver 12 includes service layer 14. (See Lin at Figure 1). Thus, Lin does not disclose or reasonably suggest excluding version identification data, as disclosed in claim 1. Therefore, claim 1 is patentable over Lin.

Additionally, applicant respectfully submits that it would not have been obvious at the time of invention to exclude the version identification data. For example, prior art drivers in Linux export a version string to the kernel, the version string defines identification data required to establish a version match between the driver and kernel for operation of the driver with the kernel. The Linux drivers rely on the identification data for proper operation. (See Specification at pg. 3, paragraph [0002]). By excluding the version identification data from the driver, the version identification data can be dynamically added from the kernel when the driver is installed, thus eliminating incompatibilities between the driver and the kernel due to a change in the version of the kernel. (See Specification at paragraphs [0021] – [0022]). Therefore, it would not have been obvious at the time of invention to exclude the version identification data, thus claim 1 is patentable over Lin.

Claims 2-10 depend from claim 1 and include additional limitations. Therefore, claims 2-10 are also patentable over Lin.

Claim 11 also recites, in part, a computer program component excluding version identification data. Similar to the discussion above, Lin does not disclose or suggest such

a feature. Therefore, claim 11 is patentable over Lin for the reasons discussed above with respect to claim 1. As claims 12-20 depend from claim 11 and include additional limitations, claims 12-20 are also patentable over Lin.

Claims 21 and 23-25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Carney et al. (U.S. Patent No. 5,303,392) in view of Linux Home Page as posted 12/01/2001. Applicant submits that the present claims are patentable over Carney in view of Linux Home Page.

Carney discloses a method and apparatus for providing access to symbol definitions in a dynamically reconfigurable operating system. An operating system symbol definition file builder is invoked to build a symbol definition file comprising current symbol definitions in the operating system. The builder may be invoked whenever a utility or an application program requests to open the symbol definition file and there is not an up-to-date system definition image file. The builder deletes the symbol definition file whenever the symbol definition image file is closed by the last referencing utility/application program, and the system definition file is no longer up-to-date. (See Carney at col. 1, line 60 – col. 2, line 12).

Claim 21, as amended, recites forming a kernel version independent device driver, wherein version identification data is excluded. Applicant submits that Carney does not disclose or suggest such a feature. Furthermore, Applicant submits that 'Linux Home Page' does not disclose or suggest forming a kernel version independent device driver, wherein version identification data is excluded.

As neither Carney nor 'Linux Home Page' disclose or suggest the features of claim 21, any combination of Carney and 'Linux Home Page' would also not disclose or suggest those features. Therefore, claim 21 is patentable over Carney in view of 'Linux Home Page'. Claims 23-25 depend from claim 21 and include additional limitations. As a result, claims 23-25 are also patentable over Carney even in view of 'Linux Home Page'.

Claim 22 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Carney et al. in view of Siegel (U.S. Patent No. 6,298,440). Siegel discloses a method for initializing an auxiliary code resource, namely multiple entry point code resources. (See Siegel at Abstract). Dependant claim 22 depends from and necessarily includes the limitations of independent claim 21. As discussed above with respect to claim 21, Carney does not disclose or suggest forming a kernel version independent device driver, wherein version identification data is excluded. Nor does Siegel disclose or suggest such a feature. Therefore, any combination of Carney and Siegel would not disclose or suggest the features of claim 22. As a result, claim 22 is patentable over Carney even in view of Siegel.

Claim 22 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Lin et al. in view of Siegel. Dependant claim 22 depends from and necessarily includes the limitations of independent claim 21. As discussed above with respect to claim 21, Lin does not disclose or suggest the formation of a kernel independent device driver without version identification data. Nor does Siegel disclose or suggest such a feature.

Therefore, any combination of Lin and Siegel would not disclose or suggest the features of claim 22. As a result, claim 22 is patentable over Lin even in view of Siegel.

Applicant respectfully submits that the rejections have been overcome and that the claims are in condition for allowance. Accordingly, applicant respectfully requests the rejections be withdrawn and the claims be allowed.

The Examiner is requested to call the undersigned at (303) 740-1980 if there remains any issue with allowance of the case.

Applicant respectfully petitions for an extension of time to respond to the outstanding Office Action pursuant to 37 C.F.R. § 1.136(a) should one be necessary. Please charge our Deposit Account No. 02-2666 to cover the necessary fee under 37 C.F.R. § 1.17(a) for such an extension.

Please charge any shortage to our Deposit Account No. 02-2666.

Respectfully submitted,

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